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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEB - 5 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter Of)
)
Definition of Markets for Purposes)
of the Cable Television Mandatory)
Television Broadcast Signal)
Carriage Rules)

CS Docket No. 95-178

To: The Commission

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COMMENTS

SL Communications, Inc. ("SL"), by its attorneys and pursuant to Sections 1.415 of the Commission's Rules, hereby files its Comments in the above-captioned proceeding dealing with the market definition process utilized in connection with the Commission's broadcast signal carriage rules. In support thereof, SL states as follows.

1. In the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), television broadcast stations were presented with the option of seeking retransmission consent agreements with cable television operators or asserting mandatory carriage rights on the cable systems located within the stations' markets. For station licensees choosing the latter course, the 1992 Cable Act and the Rules (Section 76.55(e)) provide that a station's market, for cable carriage, is to be defined as the Area of Dominant Influence ("ADI") for the station, as established by the Arbitron Ratings Company

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("Arbitron"), a private entity that provided audience measurement information for the radio and television industries.

2. The determination as to whether a television station licensee seeks retransmission consent or must-carry treatment for its station is a triennial process. The initial determination was made in 1993. Consistent with this schedule, a second election will have to be made by television station licensees by October 1, 1996, with such election effective on January 1, 1997. Section 76.64(f)(2).

3. As part of the triennial determination process, the Commission, in drafting Section 76.55(e), added a Note providing specific direction as to which Arbitron determination as to ADIs would be dispositive. In 1993, the ADI assignments contained in the "1991-92 Television ADI Market Guide" ("1991-92 Guide") were to be used. For 1996, the 1994-95 version of the Television ADI Market Guide would provide the necessary information.

4. Were it not for changes involving the Arbitron organization, this rulemaking process would not be necessary. However, Arbitron, in 1993, terminated its television measurement services and, with it, the assignment of counties to ADIs. In fact, Arbitron, for its ongoing radio audience measurement services has adopted the market definitions, known as Designated Market Areas ("DMA") prepared by Nielsen Media Research, the sole entity that now measures television audiences on a nationwide basis. The instant proceeding is intended to address the impact of there being no new market information from Arbitron for the

1996 round of elections and what procedures the Commission should adopt to deal with this change in circumstances.

4. In the NPRM, the Commission suggests three possible mechanisms for dealing with the standards for market determination: (1) adopt the Nielsen DMAs, (2) use the existing ADI information derived from the 1991-92 Guide, or (3) retain the ADI definitions from the 1991-92 Guide for the 1996 elections but agree to shift to Nielsen DMAs for future elections. The Commission further states that its inclination is to continue to utilize the assignments contained in the 1991-92 Guide. SL submits that the continued use of the 1991-92 Guide is at odds with the statutory requirement for triennial elections as to retransmission consent or mandatory signal carriage (47 U.S.C. 325(b)(3)(B)), fails to allow for consideration of changed circumstances, and represents a poor policy choice in the face of the availability of updated audience measurement information.

5. In adopting the Note to Section 76.55(e), the Commission correctly announced noted that the triennial election should be accompanied by updated market listings. It did so by proposing to use the latest market listings that Arbitron issued prior to the election cycle. That Arbitron is no longer preparing market definitions is an insufficient basis, of itself, upon which to alter this decision to have the retransmission consent/must-carry elections premised on current market conditions. This is especially significant in light of the fact that updated market definitions are readily available in the form of the Nielsen

DMAs.

6. The Commission's reasoning in support of the status quo is insufficient to reverse the earlier determination that market updating is necessary. First, we are told that the continued use of the 1991-92 Guide promotes stability in the process. There is nothing unstable about the use of triennial elections and the change allows for marginal market redefinitions to be effected. In fact, unless parties are able to make their retransmission consent or mandatory carriage election based on current information, the Commission is impermissibly altering the election process established by Section 325 of the Communications Act. Parties that might have changed their decision, from retransmission consent to mandatory carriage, or vice versa, based on a change in market, are prohibited from doing so. In effect, the election process is of no significance if the parties are locked into a changed marketplace without being able to make use of the changes.

7. The change to a DMA-based system is not a drastic one and the existing rule itself was premised on the parties accepting the changes between the 1991-92 Guide and the most recent one. Is there a significant difference between DMAs and revised ADIs? In that we believe that there is no wholesale difference between ADIs and DMAs, the Commission is not looking at major alterations in cable carriage by cable television systems. Also, SL submits that Section 641(h) modifications are not impaired by this process. If parties determine further changes are necessary,

they retain the right to seek further modifications through the special relief process. This process is in place and can be used at any time by television licensees or cable operators.

8. The failure to make the change to the Nielsen DMAs is of particular importance to SL. SL has filed with the Commission a Joint Petition for Leave to Amend and for Grant of Application in MM Docket No. 85-269. Assuming the Joint Petition is granted, SL would be the amended applicant in the application filed by Dorothy O. Schulze and Deborah Brigham, thereby becoming the permittee of a new UHF television station on Channel 52 at Blanco, Texas. SL would expect to commence broadcast service on this station at the earliest possible time.

9. While SL has been unable to examine the 1991-92 Guide, it is concerned, by virtue of the attached Arbitron document (Exhibit A), that Blanco County was assigned by Arbitron to the San Antonio, Texas ADI, not the Austin, Texas ADI.¹ The station, having not been built, was not even listed in the 1991-92 Guide. Thus, applying the 1991-92 Guide, SL might have to look to the San Antonio, Texas ADI for must-carry treatment.

10. Historically, Blanco County has had closer ties to the Austin, Texas area than to the San Antonio, Texas one. SL is not certain why the 1991-92 Guide might have placed the station in

¹ SL is not certain if the 1991-92 Guide lists Blanco County in the San Antonio ADI. However, since SL does not subscribe to Arbitron's publication, it cannot learn what is contained therein. Even the Commission, which has the document, has refused to permit SL to review it in order to be certain how Blanco County is treated for must-carry purposes.

the San Antonio ADI. However, SL is well aware that Arbitron reports subsequent to the one attached hereto reported that Blanco County was part of the Austin, Texas ADI. At the present time, Nielsen treats Blanco County as part of the Austin DMA and the viewing patterns in the county confirm this.

11. SL fully intends to reflect the Austin orientation of its home county in the new station and its programming. If it is not allowed to have must-carry treatment in the Austin market, SL will be disadvantaged in having an Austin orientation without Austin carriage. There is no sense in this occurring and it would not if present viewing trends were reflected in the must-carry treatment of the new station.

12. Under the circumstances, SL submits that the Commission should not have new stations treated in any manner that reflects television viewing more than five years ago. Rather, new stations should be entitled to must carry treatment based on television viewing at the time they commence operations. In order to assure this, the Commission should adopt the most recent guide issued by Nielsen spelling out the DMAs. If it decides to continue using the 1991-92 Television ADI Market Guide, the Commission must, at a minimum, permit a television station licensee to rely on, for must-carry purposes, any differences between the most recent DMA market definitions and those contained in the 1991-92 Guide, with the DMA market definitions being the ones that prevail.

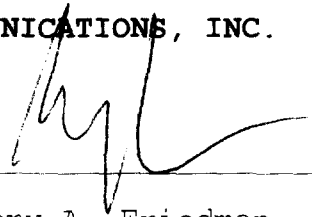
13. SL believes that the Commission must ensure a procedure

that serves to provide the required updating of market definitions for the 1996 election process and thereby makes the process one that reflects the realities of the 1996 marketplace.² Unless this goal is achieved, the new station will be bound by a marketplace determination, for an unbuilt station, that is at least five years out of date. Recognizing the ever changing world of the television industry, the Commission must have these important decisions made on the basis of the most recent data available. That means the use of recent DMA information as the principal market indicator or one that allows a licensee to update out-of-date ADI information.

Respectfully submitted,

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Dated: February 5, 1996

² In this regard, the Telecommunications Act of 1986, in Section 301(d)(1) (which modifies 47 U.S.C. 534(h)(1)(C)), mandates that the Commission use "commercial publications which delineate television markets based on viewing patterns." SL submits that the Nielsen DMA information is the only source that meets this test.

Exhibit A

Audience Estimates in the Arbitron Market of

Austin, TX

This report is furnished for the exclusive use of
Arbitron clients. The television stations which
subscribe to this Market Report are:

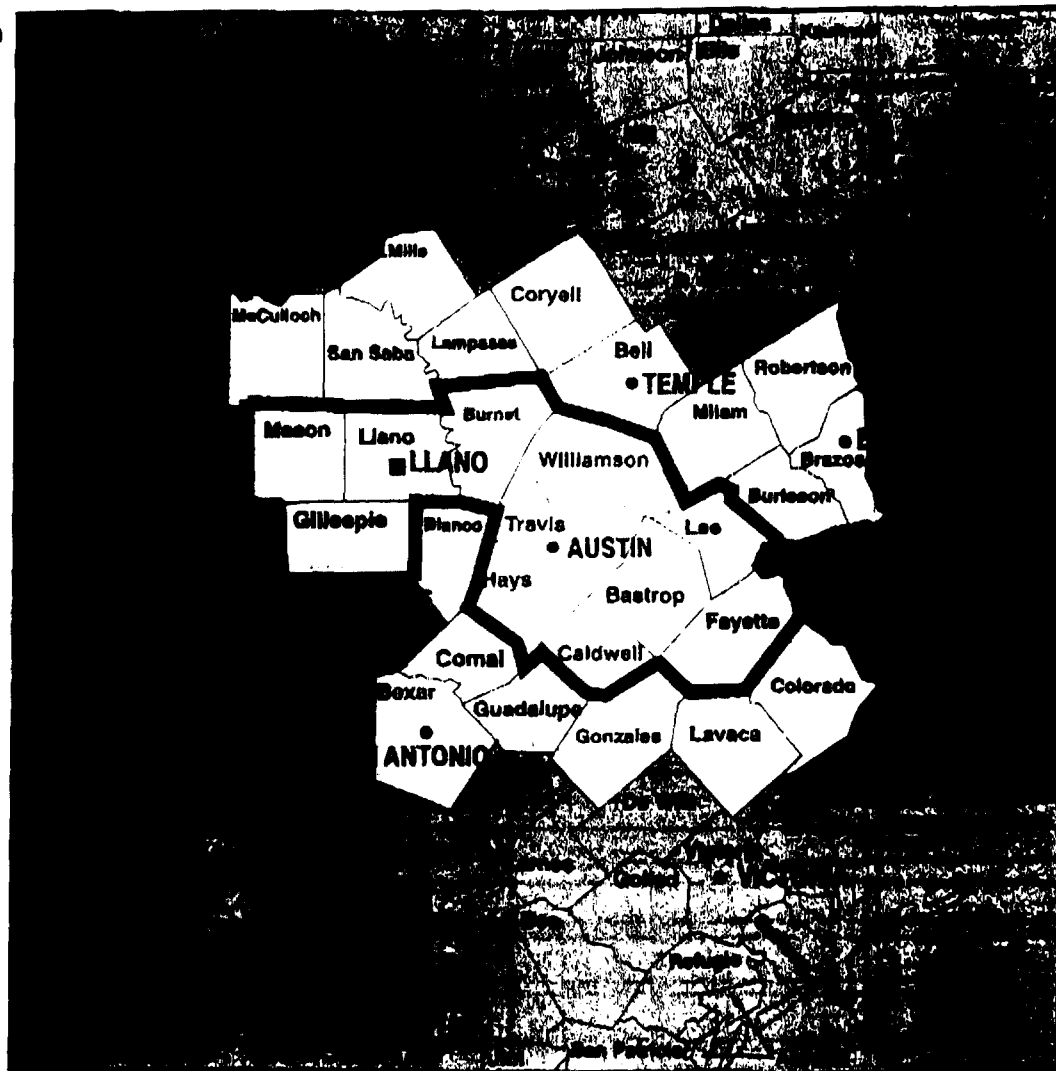
KTBC KVC KVUE KXAN

Survey Period:
NOV 03, 1993 - NOV 30, 1993
Survey Months:

NOV

1993-1994 Survey Dates

October Sept. 29 - Oct. 26, 1993
November Nov. 3 - Nov. 30, 1993



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☐ Metro ☐ ADI ☐ TSA
• City of license • City of license of satellite station

Estimates of Households in Market

	TSA	Pct TVHH	ADI	Pct TVHH	Metro Rating Area	Pct TVHH
TOTAL HOUSEHOLDS	1,086,300		397,000		380,700	
TV HOUSEHOLDS	1,084,800	100	392,400	100	356,900	100
MULTISET TV HH	698,900	66	252,800	64	230,800	65
CABLE + OTHER TV HH	700,500	66	266,100	68	248,400	70
VCR HOUSEHOLDS	884,200	84	338,600	86	310,200	87

Television Stations

Call Letters	Channel Number	Affiliation	Home Non-ADI Outside	City of Identification Authorized by FCC	
KTBC-TV	7	CBS	H	AUSTIN, TX	
KVC	13	IND	H	AUSTIN, TX	(LOW POWER TV K13VC)
KVUE-TV	24	ABC	H	AUSTIN, TX	
KXAN-TV	36	NBC	H	AUSTIN, TX	
KXAN-TV	14	S-2 OF KXAN	H	LLANO, TX	
KBYO	42	FOX (IND)	H	AUSTIN, TX	
KLRU	18	PTV	H	AUSTIN, TX	
WTBS	17	TBS	O	ATLANTA, GA	
VCNN				CABLE NEWS NETWORK	ESTIMATED TO BE ON 49 CABLE SYSTEMS
VESN				ESPN	ESTIMATED TO BE ON 50 CABLE SYSTEMS
VHBO				HOME BOX OFFICE	ESTIMATED TO BE ON 42 CABLE SYSTEMS
VUSA				USA NETWORK	ESTIMATED TO BE ON 41 CABLE SYSTEMS

NOVEMBER 1993

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AUSTIN, TX

Counties Included In Survey Area

KEY	AREA ASSIGNMENT	TV HH IN ADJACENT ADI	ADJACENT ADI MARKET
A	COUNTY IS IN HOME MARKET ADI		
1	COUNTY IS IN ADJACENT ADI 1	1,520,800	HOUSTON
2	COUNTY IS IN ADJACENT ADI 2	638,300	SAN ANTONIO-VICTORIA
3	COUNTY IS IN ADJACENT ADI 3	284,400	WACO-TEMPLE-BRYAN
0	COUNTY IS IN OTHER ADI MARKET		

METRO COUNTIES				FOUR WEEK				FOUR WEEK			
AREA KEY	CABLE PCT	COUNTY	STATE ESTIMATES	TV HH IN-TAB	AREA KEY	CABLE PCT	COUNTY	STATE ESTIMATES	TV HH IN-TAB	AREA KEY	CABLE PCT
A	C 65.6	BASTROP	B/H TX	14,000	22	A	C 70.6	TRAVIS	B/H TX	254,900	389
A	43.1	CALDWELL	B/H TX	9,000	13	A	C 70.4	WILLIAMSON	B/H TX	56,200	82
A	C 69.3	HAYS	B/H TX	23,800	24						
TOTAL									356,900	500	

ADI TORUS COUNTIES				FOUR WEEK				FOUR WEEK			
AREA KEY	CABLE PCT	COUNTY	STATE ESTIMATES	TV HH IN-TAB	AREA KEY	CABLE PCT	COUNTY	STATE ESTIMATES	TV HH IN-TAB	AREA KEY	CABLE PCT
A	68.0	BURNET	H TX	9,400	8	A	48.5	LEE	H TX	4,800	8
A	48.2	FAYETTE	H TX	7,800	14	A	49.2	LLANO	H TX	6,400	8
A	58.2	GILLESPIE	H TX	6,900	10	A	76.1	MASON	H TX	1,400	8
TOTAL									36,500	49	
ADI TOTAL									392,400	549	

TSA TORUS COUNTIES				FOUR WEEK				FOUR WEEK			
AREA KEY	CABLE PCT	COUNTY	STATE ESTIMATES	TV HH IN-TAB	AREA KEY	CABLE PCT	COUNTY	STATE ESTIMATES	TV HH IN-TAB	AREA KEY	CABLE PCT
3	C 74.5	BELL	B/H TX	55,800	110	2	C 48.9	GUADALUPE	H TX	24,100	23
2	C 65.2	BEXAR	H TX	436,000	475	3	70.0	LAMPASAS	B TX	5,100	3
2	38.8	BLANCO	H TX	2,700	6	2	30.0	LAVACA	H TX	7,100	6
3	C 77.5	BRAZOS	B/H TX	45,000	101	0	64.9	MC CULLOCH	H TX	3,100	14
3	65.1	BURLESON	B TX	5,300	4	3	72.5	MILAM	B TX	8,400	6
1	66.0	COLORADO	B/H TX	6,800	4	3	71.9	MILLS	B TX	1,800	2
2	60.9	COMAL	H TX	21,300	19	3	45.7	ROBERTSON	B TX	5,500	2
3	C 74.8	CORYELL	B/H TX	17,100	23	3	63.8	SAN SABA	B TX	2,100	2
2	33.9	GONZALES	H TX	6,200	7						
TOTAL									662,400	809	
TSA TOTAL									1,054,800	1,358	

C = CABLE CONTROL IMPLEMENTED

H=HISPANIC DIFFERENTIAL SURVEY TREATMENT IMPLEMENTED IN THIS COUNTY

B=BLACK DIFFERENTIAL SURVEY TREATMENT IMPLEMENTED IN THIS COUNTY

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AUSTIN, TX